

REMARKS

Applicant submits this response to an Office Action (Non-Final Rejection) mailed June 9, 2006. Reconsideration of the application in view of the claim amendments set forth herein and the following remarks is respectfully requested.

Claims 1-19 are pending in the present application. By the present submission, Applicant has amended independent claims 1, 8, 18 and 19 without prejudice to more clearly recite the subject matter of the presently claimed invention. Claim 1 has been amended to include the subject matter of dependent claim 7, thereby obviating the outstanding objection of claim 7, which the Examiner has indicated would be allowable if redrafted in independent form. Independent claim 8 has been amended to include the subject matter of claim 9 and claim 7 to more clearly recite the subject matter of the presently claimed invention and to obviate the Examiner's objection to claim 7 as discussed herein. Claim 7 and claim 9 have been cancelled without prejudice. Dependent claims 10 , 12 and 13 have been amended to depend directly or indirectly upon claim 8 providing for proper antecedent basis given the cancellation of claim 9. Similarly, independent claims 18 and 19 have been amended to include the recitation of dependent claim 7.

Support for the amended claim recitations is found in the application as originally filed, e.g., at page 3, line 30 – page 4, line 2 and in the accompanying Figures 1-4. Accordingly, Applicant respectfully submits that no new matter is introduced by way of the proposed claim amendments, and prompt entry thereof is respectfully requested.

In the outstanding Office Action, the following art-based rejections were advanced:

- Claims 1-3, 5, 8-10, 12, 14, 15, 17 and 18 were rejected under 35 USC § 102(e) as being anticipated by Golladay, U.S. Patent No. 6,723,173 (the “Golladay ‘173 patent”);
- Claims 11, 16 and 19 were rejected under 35 USC § 103(a) as being unpatentable over the Golladay ‘173 patent;
- Claim 4 was rejected under 35 USC § 103(a) as being unpatentable over the Golladay ‘173 patent in view of Denome, U.S. Patent No. 6,598,242 (the “Denome ‘242 patent”);
- Claim 6 was rejected under 35 USC § 103(a) as being unpatentable over the Golladay ‘173 patent in view of the Denome ‘242 patent, and in further view of Driver, US Patent No. 6,006,935 (the “Driver ‘935 Patent”);
- Claim 13 was rejected under 35 USC § 103(a) as being unpatentable over the Golladay ‘173 patent in view of Damron, US Patent No. 6,659,503 (the “Damron ‘503 Patent”).
- Claim 7 was objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant respectfully requests reconsideration of the current art-based rejections in view of the claim amendments and remarks set forth herein.

1. Rejection based on 35 USC §102(e)

Turning to the specific outstanding art-based rejections, Applicant notes that the Golladay ‘173 patent forms the basis of the outstanding Section 102 rejection and the primary reference for the majority of Section 103 rejections. Independent claims 1, 8 and 18 have been amended to

recite in pertinent part the subject matter of claim 7. The Examiner has expressly stated that claim 7 would be allowable if rewritten in independent form. (See e.g., Examiner's Office Action, Paragraph 4.) Particularly, the Examiner states that the, “[p]rior art does not disclose the invention described above further comprising vents communicating with vent outlets in a headboard.” Thus, claim 1, as amended, patentably distinguishes over the Golladay '173 patent for at least the reason noted by the Examiner with respect to dependent claim 7.

Moreover, Applicant respectfully submits that amending independent claims 8 and 18 to each include the subject matter of claim 7 also obviate the Section 102 rejections thereof. Claim 8 has been amended to include the subject matter of claim 9 to more clearly recite the distinctive aspects of the present disclosure. In fact, the language of claim 8 as amended is more consistent with the recitation of claims 1 and 18 relative to the advantageous aspects of the present disclosure. Since none of the prior art disclose “vents communicating with vent outlets in a headboard,” the Golladay '173 patent fails to teach each element of the claim as required by the MPEP. According to the MPEP, “[t]o anticipate a claim, the reference must teach every element of the claim.” (See, e.g., MPEP § 2130.)

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (See e.g., MPEP §2130.)

With reference to the amendments and remarks set forth above, the Golladay '173 patent fails to anticipate the present application because, *inter alia*, it does not describe “each and every element” of the applicant’s claims 1, 8, and 18. Therefore, applicant respectfully submits that the Section 102(e) rejection based on the Galladay '173 patent is obviated as to independent claims 1, 8 and 18 and dependent claims 2, 3, 5, 9, 10, 12, 14, 15 and 17, which depend therefrom.

For at least the foregoing reasons, Applicant respectfully submits that the Section 102 rejections of independent claims 1, 8 and 18 based on the Galladay '173 patent should be reconsidered and withdrawn. Similarly, applicant respectfully submits that the Section 102(e) rejections of all pending dependent claims, i.e., claims 2, 3, 5, 9, 10, 12, 14, 15, and 17 (which depend directly or indirectly from the foregoing independent claims) should be withdrawn. Reconsideration and withdrawal of the Section 102(e) rejections based on the Galladay '173 patent are respectfully requested.

2. Rejection based on 35 USC §103(a)

With reference to the various obviousness rejections, Applicant respectfully submits that none of the secondary references, namely the Denome '242 patent, the Driver '935 Patent, and/or the Damron '503 patent, cure the deficiencies of the Golladay '173 patent discussed herein above. For example, the secondary references, whether taken alone or in combination with the Golladay '173 patent and/or each other, fail to teach or suggest a system/method wherein, *inter alia*, the fluid storage tank comprises one or more vents in fluid communication with one or more vent outlets disposed in a loading tray headboard. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding obviousness rejections.

With reference to independent claim 19 (the only independent claim rejected for obviousness), Applicant submits an amendment such that claim 19 includes the subject matter of claim 7. As such, Golladay fails to teach or suggest a fluid storage tank comprising one or more vents in fluid communication with one or more vent outlets disposed in a loading tray headboard. Claim 19, just as claim 1, claim 8, and claim 18, recites the subject matter of claim 7 written in independent form, which the Examiner has stated is allowable. Claim 19 recites applying the distinctive features of the present disclosure to a tractor trailer configured for transporting goods.

Furthermore, the remaining obviousness rejections are directed to claims dependent upon the independent claims set forth above. The Examiner relies on the Golladay '173 patent to recite the elements of the independent claims and thus the secondary references to describe the subject matter of the dependent claims. With reference to the remarks set forth above distinguishing Golladay '173 patent from the present application, all of the cited references, alone or in combination, fail to teach and/or suggest a fluid storage tank comprising one or more vents in fluid communication with one or more vent outlets disposed in a loading tray headboard.

According to the MPEP (in pertinent part):

To establish a *prima facie* case of obviousness, three basic criteria must be met... Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added)

Accordingly, Applicant submits that a *prima facie* case of obviousness has not been presented since “all the claim limitations” (particularly, the recitation of claim 7 in each independent claim) have not been taught or suggested by the prior art references as discussed above.

3. Claims in Condition for Allowance

Applicant respectfully submits that all rejections (§102(e) and §103(a)) have been obviated and/or overcome by the amendments and remarks set forth herein above. Accordingly, all claims are in condition for allowance. Prompt allowance of claims 1-6, 8, and 10-19 is earnestly solicited. If the Examiner believes that a telephone conference with Applicant’s attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

Respectfully submitted,

Date: August 25, 2006



Mikhail Murshak
Reg. No. 58,472
Attorney for Applicants

McCARTER & ENGLISH, LLP
Financial Centre, Suite A304
695 East Main Street
Stamford, CT 06901
(203) 399-5900
(203) 399-5800 (fax)
mmurshak@mccarter.com

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date: 8/25/06 | Name: Joan Simmons | Signature: 